

[2024] PBRA 33

Application for Reconsideration by Davies

Application

1. This is an application by Davies (the Applicant) for reconsideration of a decision of an oral hearing panel dated 18 January 2024 not to direct his release.
2. Rule 28(1) of the Parole Board Rules 2019 (as amended by the Parole Board (Amendment) Rules 2022) (the **Parole Board Rules**) provides that applications for reconsideration may be made in eligible cases (as set out in rule 28(2)) either on the basis (a) that the decision contains an error of law, (b) that it is irrational and/or (c) that it is procedurally unfair.
3. I have considered the application on the papers. These are the oral hearing decision, the dossier (consisting of 500 pages), and the application for reconsideration (made by letters dated 20 January 2024 and 22 January 2024).

Background

4. The Applicant received a sentence of imprisonment for public protection on 23 March 2010 following conviction after trial for wounding/inflicting grievous bodily harm with intent. His tariff was set at three years and six months less time spent on remand and expired in July 2013.
5. He was released on licence in October 2020 following an oral hearing. His licence was revoked on 1 February 2022, and he was returned to custody the same day.
6. The Applicant was 34 years old at the time of sentencing and is now 48 years old.

Request for Reconsideration

7. The application for reconsideration is made by way of personal letters from the Applicant dated 20 January 2024 and 22 January 2024, to which reference will be made in the **Discussion** section below.

Current Parole Review

8. The Applicant's case was referred to the Parole Board by the Secretary of State (the Respondent) in March 2022 to consider whether to direct his release. If the Board did not direct release, it was asked to consider whether the Applicant was ready to be transferred to open conditions.

9. The case proceeded to an oral hearing on 16 January 2024. The panel consisted of three members including a psychologist specialist member. It heard oral evidence from the Applicant, together with his Prison Offender Manager (**POM**), Community Offender Manager (**COM**), an HMPPS psychologist and a psychologist instructed on the Applicant's behalf. The Applicant was legally represented throughout the hearing. The Respondent was not represented by an advocate.
10. The panel did not direct the Applicant's release (nor make a recommendation for open conditions). It is only the decision not to release the Applicant that is open for reconsideration.

The Relevant Law

11. The Parole Board will direct release if it is no longer necessary for the protection of the public that the prisoner should be confined. The test is automatically set out within the Parole Board's template for oral hearing decisions.

Parole Board Rules 2019

12. Rule 28(1) of the Parole Board Rules provides the types of decision which are eligible for reconsideration. Decisions concerning whether the prisoner is or is not suitable for release on licence are eligible for reconsideration whether made by a paper panel (rule 19(1)(a) or (b)) or by an oral hearing panel after an oral hearing (rule 25(1)) or by an oral hearing panel which makes the decision on the papers (rule 21(7)). Decisions concerning the termination, amendment, or dismissal of an IPP licence are also eligible for reconsideration (rule 31(6) or rule 31(6A)).
13. Rule 28(2) of the Parole Board Rules provides the sentence types which are eligible for reconsideration. These are indeterminate sentences (rule 28(2)(a)), extended sentences (rule 28(2)(b)), certain types of determinate sentence subject to initial release by the Parole Board (rule 28(2)(c)) and serious terrorism sentences (rule 28(2)(d)).
14. A decision to recommend or not to recommend a move to open conditions is not eligible for reconsideration under rule 28. This has been confirmed by the decision on the previous reconsideration application in *Barclay* [2019] PBRA 6.

Procedural unfairness

15. Procedural unfairness means that there was some procedural impropriety or unfairness resulting in the proceedings being fundamentally flawed and therefore, producing a manifestly unfair, flawed, or unjust result. These issues (which focus on how the decision was made) are entirely separate to the issue of irrationality which focusses on the actual decision.
16. In summary an Applicant seeking to complain of procedural unfairness under rule 28 must satisfy me that either:
 - (a) express procedures laid down by law were not followed in the making of the relevant decision;
 - (b) they were not given a fair hearing;

- (c) they were not properly informed of the case against them;
- (d) they were prevented from putting their case properly; and/or
- (e) the panel was not impartial.

17. The overriding objective is to ensure that the Applicant's case was dealt with justly.

Irrationality

18. In *R (DSD and others) v the Parole Board* [2018] EWHC 694 (Admin), the Divisional Court set out the test for irrationality to be applied in judicial reviews of Parole Board decisions. It said at para. 116,

"The issue is whether the release decision was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

19. This test was set out by Lord Diplock in *CCSU v Minister for the Civil Service* [1985] AC 374. The Divisional Court in *DSD* went on to indicate that in deciding whether a decision of the Parole Board was irrational, due deference had to be given to the expertise of the Parole Board in making decisions relating to parole. The Board, when considering whether or not to direct a reconsideration, will adopt the same high standard for establishing 'irrationality'. The fact that rule 28 contains the same adjective as is used in judicial review shows that the same test is to be applied.

20. The application of this test has been confirmed in previous decisions on applications for reconsideration under rule 28: *Preston* [2019] PBRA 1 and others.

Error of law

21. An administrative decision is unlawful under the broad heading of illegality if the panel:

- a) misinterprets a legal instrument relevant to the function being performed;
- b) has no legal authority to make the decision;
- c) fails to fulfil a legal duty;
- d) exercises discretionary power for an extraneous purpose;
- e) takes into account irrelevant considerations or fails to take account of relevant considerations; and/or
- f) improperly delegates decision-making power.

22. The task in evaluating whether a decision is illegal is essentially one of construing the content and scope of the instrument conferring the duty or power upon the panel. The instrument will normally be the Parole Board Rules, but it may also be an enunciated policy, or some other common law power.

The reply on behalf of the Respondent

23. The Respondent has submitted no representations in response to this application.

Discussion

24. Although the Applicant was legally represented at the hearing, the letters which form the basis of his application were written personally. Since the Applicant did not have the benefit of legal assistance when writing these letters, it is not surprising that they do not set out grounds for reconsideration in a precise or legalistic way. In fairness to the Applicant, I have read his letters (comprising 15 pages in total) very carefully to see if I can discern anything within them that could potentially form a basis for reconsideration on any of the three grounds set out above.

25. It is clear that the Applicant is distressed and deeply disappointed by the panel's decision. He also points out, in some considerable detail, matters of oral evidence that he regrets not being able to have made at the hearing (at which he was legally represented). He takes issue with the evidence given by his COM and the approach taken more generally by the Probation Service. However, I can find nothing in his lengthy correspondence which could reasonably be shaped into a ground for reconsideration and evaluated against the relevant law.

26. Moreover, the panel's decision is logical, evidence-based, and correctly focussed on risk throughout. It gives clear reasons for its conclusion. It is far from being an irrational decision when set against the high legal bar necessary for such a finding.

27. Since there are no discernible grounds for reconsideration put forward in the application, and the panel's decision is objectively rational, the application must fail.

Decision

28. For the reasons set out above, the application for reconsideration is refused.

Stefan Fafinski
7 February 2024